



KAMARAJ IAS ACADEMY
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Judicial Review

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Why is in news?

Chief Justice of India D.Y. Chandrachud on Monday said some parts of a draft standard operating procedure (SOP) prepared by the Centre to tailor judicial conduct in government-related cases read as if the Centre wanted to dictate the exercise of judicial review.

"I have gone through your draft SOP... There are some points which actually say how judicial review should be exercised," Chief Justice Chandrachud addressed Solicitor-General Tushar Mehta.

About:

It is a **type of court proceeding** in which a judge reviews the lawfulness of a decision or action made by a public body.

In other words, Judicial review is the **power of Judiciary to review any act or order of Legislative and Executive wings** and to **pronounce upon the constitutional validity** when challenged by the affected person.

The power of Judicial Review **comes from the Constitution of India itself** (Articles 13, 32, 136, 142 and 147 of the Constitution).

Judicial review has two important functions, like, of **legitimizing government action** and the **protection of constitution against any undue encroachment by the government**.

Judicial review is considered a **basic structure of the constitution (Indira Gandhi vs Raj Narain Case 1975)**.

Judicial review is also called the **interpretational and observer roles** of the Indian judiciary.

Suo Moto cases and the Public Interest Litigation (PIL), with the discontinuation of the principle of Locus Standi, have allowed the judiciary to intervene in many public issues, even when there is no complaint from the aggrieved party.

Categories of judicial review:

Judicial review of constitutional amendments.

Judicial review of legislation of the Parliament and State Legislatures and subordinate legislations.

Judicial review of administrative action of the Union and State and authorities under the state.

Scope of judicial review:

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court or in the High Courts on the following three grounds.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

It infringes the Fundamental Rights (Part III),

It is outside the competence of the authority which has framed it, and

It is repugnant to the constitutional provisions.

Application of Judicial review:

The Supreme Court used the power of judicial review in various cases, for example, the Golaknath case (1967), the Bank Nationalisation case (1970), the Privy Purses Abolition case (1971), the Kesavananda Bharati case (1973), the Minerva Mills case (1980), and so on.

In 2015, the Supreme Court declared both the 99th Constitutional Amendment, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 as unconstitutional and null and void.

Significance of Judicial Review:

It enables the Judiciary to act as the custodian of the Constitution by defending its principles.

It **prevents the abuse of power** by the Legislative, Executive and Administrative wings of the government.

It safeguards the Fundamental Rights of the citizens.

It **serves as a redressal mechanism** for any grievances related to unfairness of a decision by law.

It **ensures the sustenance of a “living constitution”** – one that can be periodically amended for the better.

Problems with Judicial Review:

It **limits the functioning** of the government.

Its **time-consuming nature** makes the entire process cumbersome.

It may **cause delay in the implementation** of policies.

It violates the limit of power set to be exercised by the constitution when it overrides any existing law.

The concept of separation of powers is not adhered to strictly. However, a system of checks and balances have been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.

The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.

Judicial review **can harm the public at large** as the judgment may be influenced by personal or selfish motives.

Repeated interventions of courts can **diminish the faith of the people** in the integrity, quality, and efficiency of the government.